

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re AMERICAN REALTY CAPITAL	:	Civil Action No. 1:15-mc-00040-AKH
PROPERTIES, INC. LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

PROOF OF CLAIM AND RELEASE

EXHIBIT A-2

**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Class based on your claims in the action entitled *In re American Realty Capital Properties, Inc. Litigation*, Civil Action No. 1:15-mc-00040-AKH (the “Litigation”), you must complete and, on page \_\_ hereof, sign this Proof of Claim and Release. If you fail to submit a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release form, postmarked or received by the date shown below, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement of the Litigation (the “Settlement”).<sup>1</sup>

2. Submission of this Proof of Claim and Release form, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE FORM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN JANUARY 23, 2020, TO THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

*ARCP Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43434  
Providence, RI 02940-3434  
Online Submissions: [www.ARCPSecuritiesLitigation.com](http://www.ARCPSecuritiesLitigation.com)

If you are NOT a member of the Class (as defined in the Notice of Proposed Settlement of Class Action (the “Notice”)), DO NOT submit a Proof of Claim and Release form.

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<sup>1</sup> This Proof of Claim and Release incorporates by reference the definitions in the Stipulation of Settlement (“Stipulation”), which can be obtained at [www.ARCPSecuritiesLitigation.com](http://www.ARCPSecuritiesLitigation.com).

4. If you are a member of the Class and you did not timely request exclusion from the Class, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

## **II. CLAIMANT IDENTIFICATION**

You are a member of the Class if you purchased or otherwise acquired American Realty Capital Properties, Inc. ("ARCP") common stock, preferred stock or debt securities between February 28, 2013 and October 29, 2014. Excluded from the Class are: Defendants, members of the immediate families of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest, or assigns of any such excluded party. For the avoidance of doubt, this exclusion does not extend to: (1) any investment company or pooled investment fund in which a Third-Party Underwriter Defendant<sup>2</sup> may have a direct or indirect interest, or as to which its affiliates may act as an advisor, but of which a Third-Party Underwriter Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest; or (2) any employee benefit plan as to which a Third-Party Underwriter Defendant or its affiliates acts as an investment advisor or otherwise may be a fiduciary; provided, however, that membership in the

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<sup>2</sup> Third-Party Underwriter Defendants are defined as Barclays Capital Inc., BMO Capital Markets Corp., Capital One Securities, Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Janney Montgomery Scott, LLC, JMP Securities LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc., Ladenburg Thalmann & Co. Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mizuho Securities USA LLC (f/k/a Mizuho Securities USA Inc.), Morgan Stanley & Co. LLC, Piper Jaffray & Co., PNC Capital Markets LLC, RBS Securities Inc., Robert W. Baird & Co. Incorporated, and Wells Fargo Securities, LLC.

Class by such investment company, pooled investment fund or employee benefit plan is limited to transactions in ARCP Securities made on behalf of, or for the benefit of, persons other than persons that are excluded from the Class by definition. In other words, the Third-Party Underwriter Defendants cannot make a claim on their own behalf for their ownership share in any of the above entities. The Class also excludes any person or entity that entered into any other settlement agreement or otherwise provided a release to any Defendant relating to or arising from the purchase or other acquisition of ARCP Securities prior to October 29, 2014. Also excluded from the Class is any Class Member that validly and timely requested exclusion in accordance with the requirements set by the Court in connection with the Notice of Pendency of Class Action previously provided to the Class.

Use Part I of this form entitled "Claimant Identification" to identify each purchaser or acquirer of record ("nominee"), if different from the beneficial purchaser or acquirer of the securities which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE ARCP SECURITIES UPON WHICH THIS CLAIM IS BASED.

All joint purchasers or acquirers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. All claimants **MUST** submit a manually signed paper Proof of Claim and Release form listing all their transactions whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

### **III. CLAIM FORM**

Use Part II of this form entitled “Schedule of Transactions in ARCP Common Stock,” Part III of this form entitled “Schedule of Transactions in ARCP Debt Securities” and Part IV of this form entitled “Schedule of Transactions in ARCP Preferred Stock” to supply all required details of your transaction(s) in ARCP Securities. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to ***all*** of your purchases and acquisitions and ***all*** of your sales of ARCP common stock, debt securities and preferred stock between February 28, 2013 and October 28, 2014, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect

to *all* of the shares of ARCP common and preferred stock you held at the close of trading on February 27, 2013, October 28, 2014, and January 30, 2015. Failure to report all such transactions may result in the rejection of your claim.

List these transactions separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each transaction you list.

For short-sale transactions, the date of covering a “short sale” is deemed to be the date of purchase of ARCP common stock, and the date of a “short sale” is deemed to be the date of sale of ARCP common stock.

For each transaction, you must provide, together with this claim form, copies of stockbroker confirmation slips, stockbroker statements, or other documents adequately evidencing your transactions in ARCP Securities. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

*In re American Realty Capital Properties, Inc. Litigation*

Civil Action No. 1:15-mc-00040-AKH

PROOF OF CLAIM AND RELEASE

Must Be Postmarked (if mailed) or Received (if submitted online) No Later Than:

January 23, 2020

Please Type or Print

**REMEMBER TO ATTACH COPIES OF BROKER CONFIRMATIONS OR  
OTHER DOCUMENTATION OF YOUR TRANSACTIONS IN ARCP SECURITIES.  
FAILURE TO PROVIDE THIS DOCUMENTATION COULD DELAY VERIFICATION  
OF YOUR CLAIM OR RESULT IN REJECTION OF YOUR CLAIM.**

A. Number of shares of ARCP common stock held at the close of trading on February 27, 2013:

☐ Y  
☐ N

B. Purchases or acquisitions of ARCP common stock between February 28, 2013 and October 28, 2014, inclusive:



PURCHASES																					
Trade Date(s) of Shares (List Chronologically)		Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price (Excluding Commissions, Taxes and Fees) Please round off to the nearest whole dollar	Proof of Purchase Enclosed?																	
M	M	D	D	Y	Y	Y	Y														
1.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
2.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
3.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
4.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
5.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N

IMPORTANT: (i) If any purchase listed covered a "short sale," please mark Yes: ☐ Yes  
(ii) If you received shares through an acquisition or merger, please identify the date, the share amount and the company acquired:

	/		/																	
Mo.		Day		Year										Merger Shares						Company

C. Sales of ARCP common stock between February 28, 2013 and January 30, 2015, inclusive:

SALES																					
Trade Date(s) of Shares (List Chronologically)		Number of Shares Sold	Total Sales Price (Excluding Commissions, Taxes and Fees) Please round off to the nearest whole dollar	Proof of Sales Enclosed?																	
M	M	D	D	Y	Y	Y	Y														
1.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
2.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
3.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N
4.			/			/								\$						.00	<input type="radio"/> Y <input type="radio"/> N

D. Number of shares of ARCP common stock held at the close of trading on October 28, 2014:

Proof Enclosed?																				
<input type="radio"/> Y																				
<input type="radio"/> N																				

E. Number of shares of ARCP common stock held at the close of trading on January 30, 2015:

Proof Enclosed?																				
<input type="radio"/> Y																				
<input type="radio"/> N																				

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_\_\_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

## PART III: SCHEDULE OF TRANSACTIONS IN ARCP DEBT SECURITIES

## Purchases or Acquisitions

Trade Date Month Day Year	Debt Offering	Number of Units Purchased or Acquired	Total Purchase or Acquisition Price

## Sales (July 25, 2013 – October 28, 2014, inclusive) of ARCP Debt Securities:

Trade Date Month Day Year	Debt Offering	Number of Units Sold	Total Sales Price

Face value of ARCP Debt Securities held at the close of trading on October 28, 2014:

\_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

## PART IV: SCHEDULE OF TRANSACTIONS IN ARCP PREFERRED STOCK

- A. Purchases or acquisitions of ARCP preferred stock between January 6, 2014 – October 28, 2014, inclusive:

PURCHASES				
Trade Date(s) of Shares (List Chronologically)		Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price (Excluding Commissions, Taxes and Fees) Please round off to the nearest whole dollar	Proof of Purchase Enclosed?
M	M	D	D	Y
1.				
2.				
3.				
4.				
5.				

IMPORTANT: (i) If any purchase listed covered a "short sale," please mark Yes: ☐ Yes  
(ii) If you received shares through an acquisition or merger, please identify the date, the share amount and the company acquired:

Mo.	Day	Year	Merger Shares	Company
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- B. Sales of ARCP preferred stock between January 6, 2014 – January 30, 2015, inclusive:

SALES				
Trade Date(s) of Shares (List Chronologically)		Number of Shares Sold	Total Sales Price (Excluding Commissions, Taxes and Fees) Please round off to the nearest whole dollar	Proof of Sales Enclosed?
M	M	D	D	Y
1.				
2.				
3.				
4.				

- C. Number of shares of ARCP preferred stock held at the close of trading on October 28, 2014:

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Proof Enclosed?  
☐ Y  
☐ N

- E. Number of shares of ARCP preferred stock held at the close of trading on January 30, 2015:

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Proof Enclosed?  
☐ Y  
☐ N

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim and Release under the terms of the Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Class Member and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of the Stipulation and any judgment that may be entered in the Litigation, including the releases and the covenants set forth herein. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the purchase or acquisition of ARCP Securities during the Class Period and know of no other person having done so on my (our) behalf.

**V. RELEASES**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Claims each and all of the Released Persons.

2. "Released Persons" means each and all of the Defendants and their Related Parties.

3. “Released Claims” means any and all rights, liabilities, suits, debts, obligations, demands, damages, losses, judgment matters, issues, claims (including Unknown Claims), and causes of action of every nature and description whatsoever, in law, equity, or otherwise, whether accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether arising under federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, and whether class and/or individual in nature, concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition of ARCP Securities by Lead Plaintiff or any other Class Member during the period between February 28, 2013 and October 29, 2014; and (ii) the allegations, transactions, acts, facts, matters, occurrences, disclosures, statements, filings, representations, omissions, or events that were or could have been alleged or asserted in the Litigation. Released Claims do not include claims to enforce the Settlement, any shareholder derivative claims on behalf of ARCP, or governmental agency actions against the Released Persons.

4. “Released Defendants’ Claims” means any and all claims and causes of action of every nature and description whatsoever, including both known claims and Unknown Claims, that arise out of, are based upon, or relate in any way to the institution, prosecution, or settlement of the claims against Defendants in the Litigation, except for claims relating to the enforcement of the Settlement.

5. “Unknown Claims” means (a) any and all Released Claims which the Releasing Plaintiff Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons, which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Persons, or might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, whether or not to object to this Settlement or seek exclusion from the Class; and (b) any and all Released Defendants’ Claims that the Released Persons do not know or suspect to exist in his, her, or its favor at the time of the

release of the Plaintiffs, the Class and Plaintiffs' Counsel, which, if known by him, her, or it, might have affected his, her, or its settlement and release of Plaintiffs, the Class and Plaintiffs' Counsel. With respect to (a) any and all Released Claims against the Released Persons, and (b) any and all Released Defendants' Claims against Plaintiffs, the Class and Plaintiffs' Counsel, the Settling Parties stipulate and agree that, upon the Effective Date, the Settling Parties shall expressly waive and each Releasing Plaintiff Party and Released Person shall be deemed to have, and by operation of the Judgment shall have expressly waived, the provisions, rights, and benefits of California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Settling Parties shall expressly waive and each Releasing Plaintiff Party and Released Person shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Releasing Plaintiff Parties and Released Persons acknowledge that they may hereafter discover facts in addition to or different from those which he, she, it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims or Released Defendants' Claims, but (a) the Releasing Plaintiff Parties shall expressly fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Releasing Plaintiff Party shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date, and by operation of the Judgment shall have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Claims against the Released Persons, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed,

upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities, and (b) the Released Persons shall expressly fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and upon the Effective Date, and by operation of the Judgment shall have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Defendants' Claims against the Plaintiffs, the Class and Plaintiffs' Counsel, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Settling Parties acknowledge, and the Releasing Plaintiff Parties and Released Persons shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is an essential element of the Settlement of which this release is a part.

6. These releases shall be of no force or effect unless and until the Court approves the Stipulation and the Settlement becomes effective on the Effective Date.

7. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to this release or any other part or portion thereof.



8. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions and sales of ARCP common stock, preferred stock and debt securities during the Class Period and the number of shares of ARCP common and preferred stock held by me (us) at the close of trading on February 27, 2013, October 28, 2014, and January 30, 2015.

I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct and that the Claimant has not previously entered into any settlement agreement or provided a release of claims to any Defendant relating to or arising from the purchase or other acquisition of ARCP Securities prior to October 29, 2014.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_  
(Month/Year) (City/State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g.,  
Beneficial Purchaser, Executor or Administrator)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g.,  
Beneficial Purchaser, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

**Reminder Checklist:**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Please sign the above release and declaration.</li> <li>2. If this Claim is being made on behalf of Joint Claimants, then both must sign.</li> <li>3. Remember to attach copies of supporting documentation, if available.</li> <li>4. Do not send originals of certificates.</li> <li>5. Keep a copy of your claim form and all supporting documentation for your records.</li> </ol> | <ol style="list-style-type: none"> <li>6. If you desire an acknowledgment of receipt of your claim form please send it Certified Mail, Return Receipt Requested.</li> <li>7. If you move, please send your new address to the address below.</li> <li>8. Do not use red pen or highlighter on the Proof of Claim and Release form or supporting documentation.</li> </ol> |
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**THIS PROOF OF CLAIM AND RELEASE FORM MUST BE SUBMITTED ONLINE OR MAILED NO LATER THAN JANUARY 23, 2020,**

**ADDRESSED AS FOLLOWS:**

*ARCP Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43434  
Providence, RI 02940-3434